

Message Text

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FM AMEMBASSY LONDON

TO SECSTATE WASHDC PRIORITY 6423

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E.O. 11652: N/A

TAGS: EAIR

SUBJ: CIVAIR - CHARTER ARRANGEMENTS BETWEEN U.S. AND
ECAC MEMBER STATES - THE UPLIFT RATIO PROBLEM

RE: LONDON 17284

1. AFTER INITIAL ROUND OF TALKS, FIRST WITH ECAC COLLECTIVELY AND THEN WITH SEVERAL ECAC MEMBERS INDIVIDUALLY, IT IS APPARENT THAT UPLIFT RATIO PROVISION CONTAINED IN FOREIGN SUPPLEMENTAL AIR CARRIER PERMITS ISSUED BY CAB WILL BE A DIFFICULT OBSTACLE TO BILATERAL AGREEMENTS AT LEAST WITH THOSE ECAC COUNTRIES THAT HAVE SUPPLEMENTAL AIRLINES. BRITISH, WHO CONTROL MOST IMPORTANT EUROPEAN MARKET, HAVE BEEN MOST OUTSPOKEN IN CRITICISM OF U.S. UPLIFT RATIO. THOSE WHO ATTENDED US/ECAC MEETING IN PARIS WILL RECALL HEARING ROGERS OF UK DESCRIBE UPLIFT RATIO AS "RESTRICTIVE AND DISCRIMINATORY ABERRATION" WHICH SHOULD BE ELIMINATED. IN BILATERAL TALKS IN LONDON, ROGERS TOOK EVEN HARDER LINE SAYING UK (AND HE STRONGLY IMPLIED OTHERS AS WELL) WOULD NOT SIGN ANY BILATERAL AGREEMENT UNLESS UPLIFT RATIO REMOVED OR ASSURANCES GIVEN THAT IT WOULD NOT BE APPLIED AT LEAST DURING TERMS OF AGREEMENT. HE EVEN WENT SO FAR AS TO THREATEN THAT UNLESS THIS "ILLIBERAL" FEATURE OF

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U.S. POLICY REMOVED, UK WOULD HAVE TO RECONSIDER WHETHER

ITS OWN "LIBERAL" TREATMENT OF U.S. CHARTERS COULD
CONTINUE.

2. IT IS INDEED IRONIC THAT U.S. WHICH HAS MORE LIBERAL
CHARTER POLICY THAN VIRTUALLY ANY EUROPEAN COUNTRY SHOULD
BE CHASTISED BY ECAC MEMBER STATES FOR THE SINGLE FEATURE
OF THAT POLICY WHICH AFFORDS U.S. ANY SEMBLANCE OF CON-
TROL OVER FOREIGN AIRLINES, PARTICULARLY IN VIEW OF THE
FACT THAT, IN RECENT TIMES AT LEAST, U.S. HAS NOT ELECTED
TO EXERCISE EVEN THIS MODEST DEGREE OF CONTROL. ALTHOUGH
THE U.S. HAS NOT VIGOROUSLY ENFORCED THE UPLIFT RATIO
PROVISION IN FOREIGN SUPPLEMENTAL AIRLINES' PERMITS,
THOSE AIRLINES AND THEIR GOVERNMENTS VIEW THE UPLIFT
RATIO AS A THREAT TO WHAT WOULD OTHERWISE BE THEIR
UNFETTERED EXPLOITATION OF THE US-ORIGINATING CHARTER
MARKET AND THIS LATENT THREAT COULD BE MADE REAL AT ANY-
TIME THAT THE U.S. CHOOSES. IT IS FOR THIS REASON THAT
THE ECAC STATES HAVE ADOPTED AS A UNIFIED POSITION THAT
NO MEMBER STATE SHOULD SIGN A BILATERAL AGREEMENT IF
THERE IS ANY LIMITATION IMPOSED ON ITS CARRIERS BASED ON
THE ORIGIN OF TRAFFIC EVEN IF THE AGREEMENT ITSELF IS
SILENT ON THE QUESTION.

3. ALTHOUGH MOST MAJOR WESTERN EUROPEAN AVIATION AUTHOR-
ITIES HAVE SIGNED THE ECAC MEMORANDUM OF UNDERSTANDING
WHICH EXPLICITLY REJECTS THE UPLIFT RATIO LIMITATION,
THEY ARE NOT OF ONE MIND WITH RESPECT TO THE IMPORTANCE
THEY ATTACH TO IT. THIS IS ESPECIALLY TRUE OF THOSE
STATES WHICH DO NOT HAVE SUPPLEMENTAL AIRLINES TO WORRY
ABOUT ALTHOUGH EVEN THESE STATES CAN BE EXPECTED TO USE
THE ECAC POSITION TO TRY TO INSIST UPON ASSURANCES THAT
THEIR SCHEDULED SERVICE CARRIERS WILL BE GUARANTEED CON-
TINUED UNLIMITED ACCESS TO THE U.S. CHARTER MARKET.
EACH STATE ALSO DOUBTLESS RECOGNIZES THAT IT HAS ITS OWN
UNIQUE BARGAINING POSITION VIS-A-VIS THE U.S. AND IF
PUSH COMES TO SHOVE SOME MAY STAND TO LOSE MORE THAN THEY
COULD HOPE TO GAIN FROM ADHERENCE TO THE ECAC GUIDELINES.
NEVERTHELESS, THE U.S. MUST REALIZE THAT THE EXISTENCE
OF THE ECAC MOU PLACES EACH MEMBER IN A SOMEWHAT STRONGER
BARGAINING POSITION THAN THEY WOULD BE WITHOUT IT BECAUSE
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EACH AIR TRANSPORT AUTHORITY CAN HOLD FAST TO ITS POSI-
TION TO THE BRINK OF A CONFRONTATION WITH THE U.S. AND
JUSTIFY BRINKSMANSHIP TO ITS GOVERNMENT AND TO THE U.S.
ON THE GROUNDS THAT TO DO OTHERWISE WOULD BE TO WELSH ON
ITS COMMITMENT TO ITS ECAC PARTNERS.

4. IF IT COMES TO A CONFRONTATION WITH THE ECAC STATES
ON THE OPERATION OF CHARTER SERVICES, THERE WOULD BE A

NUMBER OF BILATERAL SITUATIONS WHERE THE U.S. WOULD WIN
PROVIDED THAT, TO DO SO, IT WAS PREPARED RESOLUTELY TO
USE ALL THE AVIATION LEVERAGE IT COULD APPLY. BECAUSE
U.S. CARRIERS ALREADY HOLD MORE THAN THREE-QUARTERS OF

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THE OVERALL NORTH ATLANTIC CHARTER MARKET, TO WIN ANY
BILATERAL CONFRONTATION, THE U.S. MAY VERY WELL HAVE TO
CALL INTO PLAY LEVERAGE OVER SCHEDULE SERVICE CARRIERS
TO BE EFFECTIVE. THIS WOULD PROBABLY BE THE CASE WITH
THE NETHERLANDS, BELGIUM, IRELAND AND POSSIBLY OTHERS AS
WELL. IN SOME BILATERAL SITUATIONS, SUCH AS THE UK,
WHERE THE OVERALL BALANCE OF BENEFITS IN AIR TRANSPORT
FAVORS THE U.S., WE MAY END UP LOSING MORE THAN WE WOULD
GAIN. IN ANY CONFRONTATION, HOWEVER, IT MUST BE KEPT IN
MIND THAT VERY SERIOUS STRAINS WOULD DEVELOP IN OUR OVER-
ALL BILATERAL RELATIONSHIPS WITH THE GOVERNMENTS INVOLVED
THAT THE INTERESTS OF THE TRAVELING PUBLIC WOULD JUST
ABOUT HAVE TO BE IGNORED OR AT LEAST ACCORDED LOWER
PRIORITY, AND THAT THE SHORT-TERM INTERESTS OF THE U.S.
CARRIERS WOULD PROBABLY BE HARMED. IN THE SLIGHTLY
LONGER TERM, CONFRONTATION WITH THE U.S. WOULD IN ALL
LIKELIHOOD DRIVE THE EUROPEANS EVEN CLOSER TOGETHER IN

A WAY THAT WOULD BE HARMFUL TO U.S. INTERESTS AND OBJECTIVES. ALL OF THESE CONSIDERATIONS, IN OUR VIEW, ARGUE FOR AVOIDANCE OF A CONFRONTATION APPROACH IF IT IS POSSIBLE.

5. IT SEEMS TO US THAT CONFRONTATION WITH THE EUROPEANS CAN BE AVOIDED, AT LEAST WITH REGARD TO THE UPLIFT RATIO LIMITED OFFICIAL USE

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ISSUE, WHICH AT THIS POINT APPEARS TO BE THE MAJOR OBSTACLE TO CONCLUDING BILATERAL AGREEMENTS. AND IT MIGHT BE AVOIDED IN A WAY THAT WOULD DRIVE A WEDGE BETWEEN SOME OF THE ECAC STATES WHICH THUS FAR HAVE MAINTAINED A FAIRLY UNIFIED FRONT. BUT TO DO SO WILL REQUIRE SOME FLEXIBILITY AND INGENUITY ON THE PART OF THE U.S.

6. THE MAJOR THRUST OF ECAC THUS FAR HAS BEEN TOWARD A HARMONIZATION OF APPROACH ON CHARTER MATTERS. AT LEAST WITH RESPECT TO NORTH ATLANTIC CHARTERS, NO EUROPEAN COUNTRY HAS ADOPTED NOR HAS FELT ANY NEED TO ADOPT A CWPACITY LIMITATION BASED ON ORIGIN OF TRAFFIC, OBVIOUSLY BECAUSE THE U.S. IS THE MAJOR ORIGINATING MARKET. NATURALLY, THE U.S. UPLIFT RATIO, WHICH OUR SYSTEM REQUIRES BE FORMALLY ADOPTED AND EXPRESSLY STATED IN SOME AIRLINE PERMITS, FROM THE EUROPEAN PERSPECTIVE, STANDS OUT AS AN "ILLIBERAL" AND PROTECTIVE DEVICE. IN FOCUSING THEIR ATTENTION ON AND DIRECTING THEIR EFFORTS AGAINST THIS "ILLIBERAL" FEATURE OF U.S. POLICY, HOWEVER, THE EUROPEANS HAVE FAILED TO TAKE INTO ACCOUNT THE FACT THAT THE U.S. IS THE ONLY COUNTRY WHICH DOES NOT REQUIRE PRIOR APPROVAL FOR CHARTER FLIGHTS. CERTAINLY THE EUROPEANS EXERCISE PRIOR APPROVAL WHICH GIVES THEM CONTINUOUS AND INSTANT CONTROL OVER ALL CHARTER OPERATIONS. THEY HAVE, HOWEVER, ASSUMED THAT THE U.S. WILL NOT EMULATE THEIR PRACTICE.

7. IN THESE CIRCUMSTANCES, IT SEEMS TO US THAT THE U.S. COULD MAKE MAJOR GESTURE TOWARD CONCILATION WITH THE EUROPEANS AND AT SAME TIME OBTAIN IMPORTANT ADVANTAGES FOR ITSELF BY TELLING ECAC STATES THAT THE U.S. WILL, IN THE CONTEXT OF OTHERWISE ACCEPTABLE BILATERAL AGREEMENTS AND DURING TERM OF SUCH AGREEMENTS, AGREE TO SUSPENSION OF THE UPLIFT RATIO BUT BECAUSE WE CONTINUE TO REGARD THIS AS A TRAFFIC RIGHTS ISSUE AND BECAUSE EUROPEANS INSIST UPON CMNTINUATION OF THEIR PRIOR APPROVAL REGIME, THE U.S. WILL SIMILARLY REQUIRE THAT ALL FOREIGN CHARTER APPLICATIONS BE FILED WITH THE CAB FOR PRIOR APPROVAL. WE COULD THEN TELL THEM THAT IT WOULD BE U.S. INTENTION TO CONTINUE ITS GENERALLY LIBERAL POLICY WITH RESPECT TO

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CHARTERS BASED ON FULL RECIPROCITY AND IN THE EVENT PROBLEMS OF ANY NATURE ARISE THE TWO SIDES WOULD AGREE TO CONSULT BEFORE UNILATERAL ACTIONS ARE TAKEN.

8. IN OUR VIEW, SUCH AN OFFER WOULD ACCOMPLISH TWO THINGS: (A) IT WOULD GIVE TO THE U.S. THE KIND OF CONTINUING AND INSTANT CONTROL OVER CHARTERS THAT THE EUROPEANS HAVE ALWAYS ENJOYED, PLACING THE U.S. ON AN EQUAL FOOTING WITH THEM IN THIS REGARD AND WITHOUT ANY REAL LOSS IN TERMS OF THE SO-CALLED PROTECTION AFFORDED BY THE UPLIFT RATIO; AND (B) IT WOULD MAKE IT IMMEDIATELY APPARENT TO THOSE STATES WITHOUT SUPPLEMENTAL AIRLINES THAT THE ADVANTAGES WHICH ACCRUE TO THEM THROUGH ADHERENCE TO ECAC WILL NOT BE WITHOUT COST TO THEM BECAUSE THEIR SCHEDULED SERVICE AIRLINES, WHICH AT PRESENT ARE NOT SUBJECT TO THE UPLIFT RATIO, WILL BE REQUIRED TO COMPLY WITH OUR NEW PRIOR APPROVAL REGIME. THIS MAY LEAD

THEM TO RECONSIDER WHETHER THE GAME IS WORTH THE CANDLE.

9. IN MAKING THIS SUGGESTION, WE REALIZE, OF COURSE, THAT THIS RATHER FUNDAMENTAL SHIFT IN OUR APPROACH TO CHARTERS MAY GIVE RISE TO SOME REGULATORY AND ADMINISTRATIVE DIFFICULTIES FOR OUR OWN AUTHORITIES. WE WOULD LIMITED OFFICIAL USE

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EARNESTLY HOPE, HOWEVER, THAT THESE DIFFICULTIES WOULD NOT PROVE INSURMOUNTABLE AND THAT THEIR PRESENCE WOULD NOT PREVENT SERIOUS CONSIDERATION OF THE SUGGESTION ON ITS MERITS, BECAUSE IN OUR VIEW UNLESS SOME WAY IS FOUND TO GET AROUND THE UPLIFT RATIO PROBLEM, CHARTER OPERATIONS NEXT SEASON WILL NOT ENJOY THE KIND OF STABILITY THAT THE MARKET AND THE INDUSTRY NEEDS TO MEET THE PUBLIC INTEREST. WE REALIZE THAT FULL RAMIFICATIONS OF OUR SUGGESTION WILL REQUIRE CAREFUL STUDY AND, IF ADOPTED, WILL INVOLVE MAJOR AVIATION POLICY DECISION. WE HAVE LITTLE FEEL FOR TIMEFRAME REQUIRED TO REACH SUCH A DECISION BUT TO ACHIEVE MAXIMUM EFFECTIVENESS, IT MIGHT BE USEFUL TO TABLE SOME KIND OF PROPOSAL WITH ECAC IN TIME FOR ITS NOVEMBER 18 MEETING.

10. OUR VIEWS WITH REGARD TO TGC SUBSTITUTIONS AND COMMINGLING PROBLEMS WILL BE REPORTED SEPTTEL.

RICHARDSON

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Message Attributes

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